

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
 )  
Additional Comment Sought on Rules )  
Governing Telephone Companies' Use ) CC Docket No. 90-623  
of Customer Proprietary Network ) CC Docket No. 92-256  
Information )  
 )

COMMENTS OF AMERITECH

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**COMMENTS OF AMERITECH**

**I. INTRODUCTION AND SUMMARY**

In a Public Notice, released March 10, 1994, the Federal Communications Commission ("FCC" or "Commission") asked for comments on "customers' CPNI-related privacy expectations, and whether any changes in the rules are required to achieve the best balance between customers' privacy interests, competitive equity and efficiency."<sup>1</sup> Ameritech<sup>2</sup> respectfully submits these comments.

The three objectives sought to be balanced by the FCC are all important and deserve equal consideration. The customer proprietary network information ("CPNI") rules provide extensive protection of customers' privacy expectations. The rules, however, do not promote competitive equity and do not encourage efficiency. Imposing extensive regulation on LECs' use of customer information, when LECs must compete with companies not subject to such regulation is inappropriate. Ameritech believes that with slight modifications, the rules would support the FCC's objectives of competitive equity and efficiency without sacrificing customer privacy.

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<sup>1</sup> Additional Comment Sought on Rules Governing Telephone Companies' Use of Customer Proprietary Network Information, CC Docket Nos. 90-623 and 92-256, FCC 94-63 (released March 10, 1994) ("Public Notice") at 1.

<sup>2</sup> Ameritech means: Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, and Wisconsin Bell, Inc.

## **II. CUSTOMERS' PRIVACY EXPECTATIONS ARE ADEQUATELY PROTECTED BY EXISTING RULES**

### **A. The Reasonable Privacy Expectations of LEC Customers are Protected**

The existing CPNI rules adequately protect the reasonable privacy interests of the customers of local exchange companies ("LECs"). A significant level of protection is embodied in the rule requiring that multiline business customers be given an annual notice advising them of their options with respect to restricting use of their information. Further, by calling or writing to Ameritech any customer -- large or small -- may request at any time that their records not be used internally or released externally, and Ameritech will honor their requests. For example, Ameritech publishes a notice in each of its telephone directories advising customers of their right to have their names removed from lists we provide to other companies. These procedures ensure that customers who wish to restrict the disclosure and use of their telecommunications records have the means of doing so.

The FCC, in the Public Notice, stated that it has previously concluded that customers' privacy expectations could be met without a notification obligation or a prior authorization requirement for internal use of residential and small business customers' CPNI.<sup>3</sup> The policies and procedures of Ameritech described above demonstrate that this conclusion is still true.

Moreover, in the docket implementing the Telephone Consumer Protection Act, the FCC discussed some of the parameters of what it believed to be consumers' privacy expectations. In that docket, the FCC concluded that a "broad" definition of a business relationship was consistent with a consumer's reasonable privacy expectation.<sup>4</sup> The FCC also found that a business relationship with one company

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<sup>3</sup>Public Notice at 2.

<sup>4</sup>In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order, CC Docket No. 92-90 7 FCC Rcd 8752 (1992) ("Telephone Consumer Protection Docket") at ¶ 35.

could also extend to the subsidiaries and affiliates of that company.<sup>5</sup> The FCC has also acknowledged that a consumer's reasonable privacy expectation is not infringed upon by contacts from affiliated companies of a company with whom the customer has a business relationship. Acknowledgment of the premise that residential and small business customers' privacy expectations are not adversely affected by contacts from a company or its affiliates, supports the conclusion that their privacy interests are adequately protected by existing CPNI rules, and that further rules are unnecessary.

The FCC, in the Public Notice, expressed concern about telephone company mergers with non-telephone company partners and the impact such affiliations might have on privacy issues.<sup>6</sup> Such affiliations do not pose a threat to consumers' privacy expectations. The privacy issues raised in such situations are no greater than the privacy concerns of consumers with respect to mergers between two non-telephone companies. Large international companies like Sears, American Express, Citicorp and others, have reams of data on their customers. Arguably, this data, particularly data in the possession of banks and securities firms, is more sensitive than the records in the possession of the LECs. Yet, these companies buy and merge with other companies regularly with no outcry from policymakers or consumers.

Further, the competitive marketplace will effectively place checks and balances on the improper use of customer information. Companies that respect their customers' wishes will gain their customers' loyalty -- others will not. Customers have competitive alternatives, and they will choose a company that respects their wishes.

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<sup>5</sup>Id. at 34.

<sup>6</sup>Public Notice at 2.

**B. The Privacy Expectations of Competitors are Protected**

Ameritech acknowledges that it would be improper to use the CPNI of enhanced services providers (“ESPs”) to target and identify their customers, and agrees that the current rules treating this information as the ESP’s CPNI should remain in effect.

**III. THE CPNI RULES ADVERSELY AFFECT CUSTOMER SERVICE**

**A. The CPNI Rules are a Major Inconvenience to Customers**

An overriding trend today in telecommunications is “one-stop shopping.” The CPNI rules significantly disadvantage Ameritech customers when it comes to “one-stop shopping.” For accounts that are CPNI restricted, Ameritech sales representatives are generally precluded from having access to records that would allow them to design an effective telecommunications package based on the customers’ total needs.

The rules also adversely affect customer service in other ways. Ameritech has started to use one telephone number in all its advertisements and marketing efforts throughout the region. Having one number that puts you in contact with Ameritech is a major convenience to customers. Yet, customers with blocked accounts are given a different telephone number on their bills to ensure that they get a “network only” representative. Currently, if a customer calls into a business office using the regional number and that customer has a blocked account, the customer will be transferred to a “network only” service representative. This requirement hampers Ameritech’s regional marketing efforts and causes customer dissatisfaction.

Moreover, customers usually object to being transferred. The service representative must then explain the reason for the transfer. At this point, often a customer will ask that their records be unblocked, and that process will be started.

However, several minutes may have passed before the customer's original inquiry is addressed.

**B. The CPNI Rules are Confusing to Customers**

Strong anecdotal evidence collected by service representatives and others responsible for explaining the CPNI rules to customers, suggests that customers are confused by the rules. Many customers believe that the information "blocked" will not be disclosed externally. They do not understand that "blocking" means that Ameritech's own employees will not use the information. Most customers probably expect that the various Ameritech divisions will share information, and thus, be able to provide them with better service. There are only a few customers who object to internal sharing of information, and they have the means of making their wishes known. Consequently, there is no need for broad rules that inconvenience large numbers of customers.

**C. The CPNI Rules Make Account Management More Difficult and Expensive for LECs**

Not only are the CPNI rules a major inconvenience for customers but they are also costly for the companies. The CPNI rules require that more service representatives be hired and be available. They reduce the overall efficiency of the business offices because the full service representatives cannot assist the "network only" representatives when there is a backlog of calls. Similarly, CPE and enhanced services account representatives must either ask customers to supply information already in our records or not present a comprehensive package to customers whose records are blocked. Customers resent this imposition on their time and sometimes question Ameritech's ability to manage their account.

#### **IV. THE CPNI RULES ARE INAPPROPRIATE IN TODAY'S COMPETITIVE ENVIRONMENT**

##### **A. There Has Been a Dramatic Restructuring of the Telecommunications Industry**

The CPNI rules have evolved since the early eighties.<sup>7</sup> The current version of the rules was initially imposed on the BOCs with respect to the sale of CPE on a structurally integrated basis. Thereafter, the rules were adopted, with slight modifications, for the BOCs' sale of enhanced services on a structurally integrated basis. During this lengthy period of development, refinement and implementation of the rules, the competitive environment -- that at one time might have justified the rules -- has changed dramatically.

Recently, the headlines have been full of news about mergers between major players in the telecommunications industry. These mergers will create national companies providing a broad range of wireline and wireless telecommunication services. These are the entities that will be competing with LECs for local exchange business.

One such milestone announcement was the announcement by AT&T that it will acquire McCaw Cellular Communications. This is a significant event in the evolution of competition in telecommunications. If this acquisition is approved it would combine the nation's largest cellular carrier with the nation's largest interexchange carrier.<sup>8</sup>

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<sup>7</sup>The earlier "no access" version of the CPNI rules applied to AT&T and the divested BOCs in Computer Inquiry II. Modifications were made for AT&T's and the BOCs' provision of CPE in Dockets 85-26 and 86-79, respectively, and for enhanced services in the Computer Inquiry III-related proceedings. See, In the Matter of Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies, Report and Order, 2 FCC Rcd 143 (1987) and In the Matter of Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), Report and Order, CC Docket No. 85-229, (released June 18, 1986).

<sup>8</sup>On April 5, 1994, U.S. District Judge Harold H. Greene ruled that this planned acquisition would violate the Modification of Final Judgment. However, AT&T's position is that the acquisition may still be approved if they can establish that the transaction is in the public interest. See, e.g., Judge Blocks AT&T's Plan to Acquire McCaw Cellular, Los Angeles Times, April 6, 1994, at Part A, Page 1.



Another major merger recently announced is the planned acquisition by MCI of Nextel Communications.<sup>9</sup> Nextel is said to be assembling a "seamless national network" of interconnected cellular-like radio systems to enter the new competitive marketplace. Nextel is, by virtue of recent purchases of radio licenses, authorized to serve metropolitan areas populated by 115 million people. This merger, along with the AT&T and McCaw merger, will create nationwide companies with the ability to provide long distance and local exchange service.

Another potential competitive alternative to LECs is represented by the cable television industry. In 1982 the cable industry had fewer than 30 million subscribers, but today it has 54.5 million subscribers and passes 88 million homes or 90% of all American households. Cable companies with this massive presence have already announced plans to provide cable and telephone service over a single facility. In the Ameritech region, MCI and Jones Intercable have announced plans to test a service that will demonstrate the viability of cable systems as an alternative to telephone systems.<sup>10</sup> This trial is scheduled to begin some time in 1994.

Moreover, relatively new companies such as Teleport Communications and Metropolitan Fiber Systems ("MFS") have begun competing head-to-head with LECs for local exchange access service. In the Ameritech region competitive access providers ("CAPS") are present in all of Ameritech's major metropolitan areas and have announced plans to expand even further into suburban and rural areas. One of these companies, MFS, has applied to the Illinois Commerce Commission for authority to expand its services beyond access and resale and into facilities-based

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<sup>9</sup>See, "MCI Acts to Build 'Wireless' Business," The Boston Globe, March 1, 1994.

<sup>10</sup>NCTA, CABLE TELEVISION DEVELOPMENTS, at 1-A to 2A (May, 1992), Jones Intercable, MCI To Test Phone Service On Cable Lines, WALL ST. J., Nov. 23, 1993 at B6.

local exchange service.<sup>11</sup> MCI is also planning to enter the local access business. The company is planning a local access trial with Hancock Rural Telephone Corporation in Indiana. MCI plans to sell local service along with long distance service.

Neither the entities formed by the mergers nor the smaller but successful CAPS, are subject to regulation of customer information to the degree such regulation is imposed on LECs. Since these entities are selling the same services and competing for the same customers, there is no basis for imposing more stringent requirements on LECs.

**B. The CPNI Rules Must Be Competitively Neutral**

CPNI rules designed specifically for one product or service, or imposed on one class of providers, are inappropriate and impractical in the current marketplace. As discussed above, the telecommunications marketplace is converging at a rapid pace. Artificial distinctions between service providers only result in asymmetrical regulation without any corresponding consumer benefits.

The clear trend is that large nationwide companies from historically distinct industries will be providing the same services and products to the global telecommunications marketplace. Imposing CPNI rules on one group of service providers causes marketplace inequities. Instead, the FCC and other policymakers should strive for regulatory parity for companies competing for the same customers.

No other telecommunications companies are subject to the same level of regulation with respect to CPNI as is imposed on LECs, and the current marketplace reveals no valid economic justification for this disparity. All of the major competitive alternatives to LECs are financially strong competitors -- they do not need protection from LECs.

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<sup>11</sup>MFS Intelenet of Illinois, Inc., Application for an Amendment to Its Certificate of Service Authority to Permit it to Operate as Competitive Local Exchange Carrier of Business Services in Those Portions of MSA-1 Served By Illinois Bell Telephone Company and Central Telephone Company of Illinois. Illinois Commerce Commission, Docket No. 93-0409, November 10, 1993.

Moreover, companies, such as Merrill Lynch and American Express, are not precluded from using information about their customers to sell them additional services. They can freely exchange information about their customers internally. LECs should have the same flexibility subject only to restrictions specifically requested by the customer.

Telecommunications and related services are very competitive industries, and to the extent customers' privacy expectations are an issue, there is nothing to suggest that those interests are impacted more when consumers obtain services from LECs.

**V. RECOMMENDED CHANGES TO CPNI RULES GOVERNING ENHANCED SERVICES AND CPE**

**A. The Prior Authorization Rule for Enhanced Services Should be Eliminated**

The prior authorization rule for marketing enhanced services to customers with more than 20 lines is unnecessary in a competitive environment, and retards the growth and development of enhanced services. Each year LECs send a notice to all multiline business customers advising of their CPNI options. If a customer with more than 20 lines does not respond to the notice and indicate that blocking is not desired, enhanced services marketing personnel are precluded from reviewing information that could meaningfully assist in the development of a comprehensive telecommunications package. This rule substantially handicaps LEC marketing efforts without a clear indication that it accurately reflects the customer's intent. The customer may not have responded because they were too busy or because they misunderstood the notice. Yet, the effect of the rule is that until the customer affirmatively asks to be unblocked (a process that consumes time and effort of the customer and the LECs), that customer's information is off-limits to the LECs' enhanced services marketing personnel.

Elimination of the prior authorization requirement would not leave customers without protection. Any customer who wants his records restricted will be able to do so by a simple letter or phone call. Customers today know how to make their wishes known. Furthermore, customers can also request that information not be released outside of the company. This provides additional protection of the customer's privacy interests.

**B. Interpreting the CPNI Rules Less Broadly to Permit Access to, But Not Use of, Blocked CPNI by Service Representatives Would Increase Efficiency**

Currently, as noted above, LECs are required to have "network only" representatives to service those customers who have requested blocking. This results in major operating inefficiencies as discussed above. If the rules were clarified to allow any service representative to handle a call, but not proactively sell CPE or enhanced services to those customers who had requested blocking of their records, operating efficiencies and customer satisfaction would increase dramatically.

Previously, when discussing the appropriateness of a prior authorization rule for small customers, the FCC noted:

"Under a prior authorization rule, a large majority of mass market customers are likely to have their CPNI restricted through inaction, and in order to serve them the BOCs would have to staff their business offices with network-services-only representatives, and establish separate marketing and sales forces for enhanced services. Thus, a prior authorization rule would vitiate a BOC's ability to achieve efficiencies through integrated marketing to smaller customers -- one of the benefits sought through adoption of nonstructural safeguards rather than structural separation."<sup>12</sup>

Service representatives could be trained on the proper procedures, and policies could be developed that would deny compensation for sales made in

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<sup>12</sup>In the Matter of Computer III, Remand Proceedings, Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, CC Docket No. 90-623 (released December 20, 1991) at 40, n. 155.

violation of the rules. This would be a major disincentive for service representatives to attempt to sell CPE or enhanced services to customers whose records were blocked. Such a revision of the CPNI rules would further the Commission's objective of efficiency, yet not compromise customers' reasonable privacy expectations.

**C. CPNI Rules Should Not Apply to the Marketing of CPE**

The market for customer premises equipment is very competitive. In 1987, the FCC found that both large and small telecommunications users are sufficiently aware of the competitive nature of the CPE market that an initial solicitation would not result in a sale, but would probably result in the customer contacting another vendor for a competitive bid.<sup>13</sup> This is even more true today when you can buy CPE at your local K-Mart or Radio Shack. There are literally dozens of sources for the purchase of CPE. A recent internal analysis revealed that, in the aggregate, sales of PBX and key systems by LECs account for between 11 and 16% of total sales of this equipment. This small percentage of sales demonstrates that CPE providers have not been harmed by the BOCs' ability to sell CPE on a structurally integrated basis. Moreover, there is no evidence that this competitive equity was achieved as a result of the CPNI rules.

**VI. CONCLUSION**

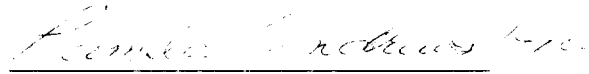
Ameritech believes that the privacy expectations of customers and competitors can be effectively met with minimal regulation. For customers who want to restrict the use of their information, they need simply ask, and their request will be honored. With respect to competitive information about a competitor's network, existing FCC rules provide an effective deterrent to the misuse of such information. Moreover, the

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<sup>13</sup>In the Matter of Amendment to Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), Report and Order, CC Docket No. 85-229, 2 FCC Rcd 3072 (1987) at ¶152.

competitive nature of the telecommunications marketplace eliminates the need for extensive regulation of one segment of that industry.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Pamela J. Andrews", is written over a horizontal line.

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I, Deborah L. Thrower do hereby certify that a copy of the foregoing Comments on Customer Proprietary Network Information Rules has been served on all parties on the attached service list by first class mail, postage prepaid, on this 11th day of April, 1994.

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